

JUDGE ROMAN

14 CV 3864

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ISABEL L. BECKER, as Administratrix of
the Estate of Deceased, NORWIN H.
BECKER, and ISABEL L. BECKER,
Individually,

Plaintiffs,

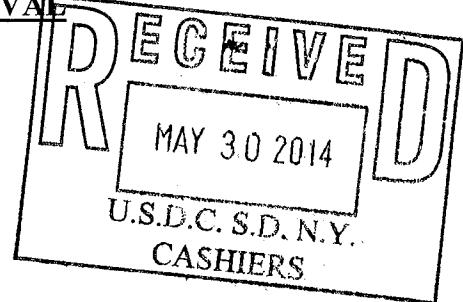
- against -

CEPHALON, INC., and TEVA
PHARMACEUTICAL INDUSTRIES LTD.,

Defendants.

CASE NO.

NOTICE OF REMOVAL



Defendants Cephalon Inc. ("Cephalon") and TEVA Pharmaceutical Industries Ltd. ("TEVA"), by and through their undersigned counsel, hereby provide notice pursuant to 28 U.S.C. § 1446 of the removal of the above-captioned case from the Supreme Court of the State of New York, County of Rockland to the United States District Court for the Southern District of New York.¹ The Court has subject matter jurisdiction, and the matter is therefore removable, pursuant to 28 U.S.C. §§ 1332 and 1441 because complete diversity exists in this action. In support of removal, Defendants state as follows.

BACKGROUND

1. On January 9, 2014, Plaintiff commenced this action by filing a summons (the "Summons") and complaint (the "Complaint") in the Supreme Court of the State of New York in the County of Rockland, Index No. 030101/2014 (the "State Court Action").

¹ In removing this action, Defendants preserve any and all defenses. See, e.g., *Cantor Fitzgerald, L.P. v. Peaslee*, 88 F.3d 152, 157 n.4 (2d Cir. 1996) ("Removal does not waive any Rule 12(b) defenses," including "defense of lack of personal jurisdiction").

2. Defendant Cephalon received a copy of the Summons and Complaint on May 13, 2014 through the Secretary of the State of New York. Defendant TEVA received a copy of the Summons and Complaint on May 16, 2014 through the Secretary of State of the State of New York. The Summons and Complaint are attached hereto as Exhibit 1.

3. Defendants filed no pleadings or papers in the State Court Action, and the time for Defendants to answer, move to dismiss, or otherwise respond to the Summons and Complaint has not yet expired.

4. Under 28 U.S.C. § 1446(b), this Notice of Removal must be filed within 30 days of the Defendants' receipt of notice that service has been made on the Secretary of State. *Calderon v. Pathmark Stores, Inc.*, 101 F. Supp. 2d 246, 247 (S.D.N.Y. 2000) ("[A] defendant's time to remove runs, not from the date of service on the statutory agent, but from the date on which the defendant receives the notice that such service has been made."). Because Cephalon received a copy of the Summons and Complaint from the Secretary of State on May 13, 2014 and TEVA received a copy of the Summons and Complaint from the Secretary of State on May 16, 2014, this Notice of Removal is timely.

5. Concurrent with the filing of this Notice, Defendants are serving this Notice on Plaintiffs' counsel and filing a copy of the Notice with the Clerk of the Supreme Court of the State of New York, Rockland County.

6. No previous application has been made for this or similar relief. This Notice of Removal is signed pursuant to Federal Rule of Civil Procedure 11.

7. The United States District Court for the Southern District of New York embraces the county in which the State Court Action is pending. Venue is therefore proper for this Notice of Removal under 28 U.S.C. §§ 112(b) and 1446(a).

JURISDICTION

8. This Court has jurisdiction over this case under 28 U.S.C. § 1332. This case is therefore removable under 28 U.S.C. § 1441.

9. Pursuant to 28 U.S.C. § 1332 this is a civil action in which the amount in controversy exceeds \$75,000 and is between citizens of different states. Further, pursuant to 28 U.S.C. § 1441(b)(2), none of the defendants is a citizen of the State in which the State Court Action was commenced.

10. Plaintiff Isabel L. Becker, both presently and at the time the State Court Action was commenced, is a citizen of New York, with a residency at 2 Squirrelwood Court, New City, New York 10956. (Ex. 1, Summons at 1.)

11. Defendant Cephalon, a wholly owned subsidiary of Defendant TEVA, is a company incorporated in Delaware with its principal place of business in Pennsylvania at 41 Moores Road, Frazer, Pennsylvania 19355. (Ex. 1, Summons at 1.) Defendant TEVA is an Israeli company with its principal place of business in Israel at 5 Basel Street, Petach Tikva, Israel 49131. Thus, Cephalon is a citizen of Pennsylvania and Delaware and TEVA is a citizen of Israel for purposes of diversity jurisdiction.

CONCLUSION

12. WHEREFORE, Defendants, pursuant to 28 U.S.C. §§ 1332 and 1441, remove this action in its entirety from the Supreme Court of the State of New York, County of Rockland to the United States District Court for the Southern District of New York.

Dated: New York, New York
May 30, 2014

Respectfully submitted,



Jay P. Lefkowitz, P.C.
Devora W. Allon
Eric S. Merin
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900

Attorneys for Defendants

Exhibit 1

Index No. 030101/2014

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

ISABEL L. BECKER, as Administratrix of the Estate of
deceased, NORWIN H. BECKER, and ISABEL L. BECKER, individually,

Plaintiffs,

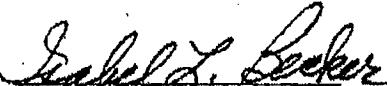
against -

Cephalon, Inc., and TEVA Pharmaceutical Industries, Ltd.,

Defendants.

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.

Dated: January 9, 2014


ISABEL L. BECKER

X

SUMMONS AND VERIFIED COMPLAINT

ISABEL L. BECKER, Plaintiff Pro Se
P.O. Box 796, 49 Maple Avenue
New City, New York 10956
(845) 634-3696
Fax No.: (845) 634-3019

FILED: ROCKLAND COUNTY CLERK 01/09/2014
NYSCEF DOC. NO. 1

INDEX NO. 030101/2014
RECEIVED NYSCEF: 01/09/2014

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

ISABEL L. BECKER, as Administratrix of the Estate of
deceased, NORWIN H. BECKER, and ISABEL L.
BECKER, Individually,

Plaintiffs,

- against -

Cephalon, Inc., and TEVA Pharmaceutical Industries,
Ltd.,

Defendants.

Index No.: 030101/2014
Date Purchased: 01/09/2014
Plaintiffs designate
ROCKLAND COUNTY
as the place of trial

The basis of venue is
Plaintiffs' residence
2 Squirrelwood Court
New City, NY 10956

SUMMONS

JURY TRIAL DEMANDED

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action, and to serve a copy of your answer, or, if complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after completion of service where service is made in any other manner than by personal delivery within New York State. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New City, New York
January 9, 2014

Isabel L. Becker
ISABEL L. BECKER, Plaintiff Pro Se
P. O. Box 796 - 49 Maple Ave.
New City, New York 10956
(845) 634-3696

Defendants:
Cephalon, Inc.
41 Moores Road
Frazer, PA 19355

TEVA Pharmaceutical Industries, Ltd.
1090 Horsham Road
North Wales, PA 19454

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

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ISABEL L. BECKER, as Administratrix of the Estate of
NORWIN H. BECKER, and ISABEL L. BECKER,
Individually,

Plaintiffs,

- against -

Cephalon, Inc., and TEVA Pharmaceutical Industries,
Ltd.,

Defendants.

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VERIFIED COMPLAINT

Index No. 030101/2014

Plaintiff, ISABEL L. BECKER, as Administratrix of the Estate of NORWIN H. BECKER,
and ISABEL L. BECKER, Individually, for their Verified Complaint against the Defendants, set
forth and allege the following:

AS AND FOR A FIRST CAUSE OF ACTION

1. At all times herein stated, plaintiff, ISABEL L. BECKER, as Administratrix of the Estate of NORWIN H. BECKER, deceased, and ISABEL L. BECKER, Individually, were and still are residents of the County of Rockland, State of New York.
2. NORWIN H. BECKER died on May 30, 2011. ISABEL L. BECKER is the Administratrix of the Estate of said deceased and has been issued Letters Testamentary by an Order, dated September 2, 2011, of the Honorable Thomas E. Walsh II, Surrogate, County of Rockland, State of New York. NORWIN H. BECKER was domiciled in the County of Rockland, State of New York, at the time of his death.

3. Cephalon, Inc. ("Cephalon"), a wholly-owned direct subsidiary of TEVA Pharmaceutical Industries, Ltd. ("Teva"), is a pharmaceutical company and sells its products, including TREANDA [bendamustine (HCl)], in New York State.

4. On or about October 14, 2011, Teva became the owner of Cephalon and, upon information and belief, acquired all of its assets and liabilities.

5. Norwin H. Becker was diagnosed with chronic lymphocytic leukemia (CCL) in 2000.

6. Norwin H. Becker was a patient under the professional care and treatment of Matthew Lonberg, M.D., a licensed practicing internist and oncology physician, on or about January 17, 2008, through and including May 30, 2011.

7. Dr. Lonberg administered allopurinol intravenously to Norwin H. Becker on or about December 8, 2010.

8. Dr. Lonberg administered TREANDA [bendamustine (HCl)] intravenously to Norwin H. Becker on or about December 14, 2010, December 15, 2010, December 20, 2010, January 10, 2011, January 19, 2011, and January 26, 2011.

9. Defendant Cephalon knew for many years that intravenous treatment with TREANDA carried grave risks, including that of a patient suffering the skin burning and continual peeling condition known as Stevens Johnson Syndrome/Toxic Epidermal Necrolysis (SJS/TEN), and the additional grave risks associated with the administration of TREANDA with or soon after the administration of Allopurinol.

and the additional grave risks associated with the administration of TREANDA with or soon after the administration of Allopurinol.

10. Defendant Cephalon had a duty to provide prospective patients with notice of the risks referred to in paragraph 9, and had a duty not to provide misleading information, so that patients could make informed intelligent choices.

11. Defendant Cephalon failed to provide prospective patients, including Norwin H. Becker, with notice of the grave risks referred to in paragraph 9, and instead provided information that was misleading and suggestive of the absence of the risks referred to in paragraph 9.

12. Patients such as Norwin H. Becker, if afforded knowledge of the foreseeable risks of administration of TREANDA, particularly with Allopurinol, would have declined such treatment.

13. As a result of the negligent, reckless, and otherwise unjustified conduct of defendants, and without any want of care on the part of Norwin H. Becker, Norwin H. Becker consciously suffered, for a period of over three months, from the side-effects of TREANDA and TREANDA with Allopurinol, including the skin burning and continual peeling condition known as Stevens Johnson Syndrome/Toxic Epidermal Necrolysis (SJS/TEN), and other grave bodily injury, causing terrible pain and extreme mental anguish.

14. The negligent, grossly negligent, and totally unjustified conduct of defendant Cephalon was the proximate cause of Norwin H. Becker's and the plaintiffs' suffering.

15. This action falls within one or more of the exemptions set forth in CPLR section 1602.

16. By reason of the foregoing, plaintiffs have been damaged in a sum which exceeds the jurisdiction of all lower Courts.

AS AND FOR A SECOND CAUSE OF ACTION

17. In the alternative or in addition to the First Cause of Action, plaintiffs repeat, reiterate and realleges each and every allegation contained in the FIRST CAUSE OF ACTION, with the same force and effect as though more fully set forth herein at length.

18. Plaintiff, ISABEL L. BECKER, was at all relevant times the wife of decedent, NORWIN H. BECKER.

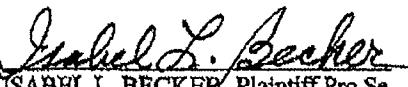
19. As a direct and proximate result of the foregoing, plaintiff, ISABEL L. BECKER, was deprived of her husband's love, services, affection, society, and companionship for over three months.

20. This action falls within one or more of the exemptions set forth in CPLR section 1602.

21. By reasons of the foregoing, plaintiffs have been damaged in a sum which exceeds the jurisdiction of all lower Courts.

WHEREFORE, plaintiffs demand judgment against Cephalon, Inc., and TEVA Pharmaceutical Industries, Ltd., for damages, compensatory and punitive, in an amount exceeding the jurisdictional limits of all lower courts, which would otherwise have jurisdiction on the FIRST and SECOND CAUSES OF ACTION, with interest, together with the costs and disbursements of this action.

Dated: New City, New York
January 9, 2014


ISABEL L. BECKER, Plaintiff Pro Se
P.O. Box 796-49 Maple Avenue
New City, NY 10556
(845) 634-3696

Defendants:

Cephalon, Inc.
41 Moores Road
Frazer, PA 19355
(610) 344-0200

TEVA Pharmaceutical Industries, Ltd.
1090 Horsham Road
North Wales, PA 19454
(888) 838-2872

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

ISABEL L. BECKER, as Administratrix of the Estate of
deceased, NORWIN H. BECKER, and ISABEL L. BECKER,
Individually,

Plaintiffs,

CERTIFICATE OF MERIT

- against -

Cephalon, Inc., and TEVA Pharmaceutical Industries, Ltd.,

Index No.

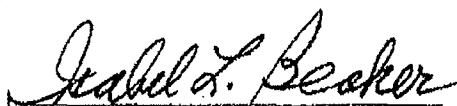
Defendants.

ISABEL L. BECKER, being duly sworn, deposes and states the following to be true under
the penalties of perjury:

I am an attorney duly admitted to practice law in the State of New York. I am the plaintiff
pro se in this matter.

I have reviewed the facts of the case and have consulted with at least one physician who is
licensed to practice in this state or any other state, and who I reasonably believe is knowledgeable in
the relevant issues involved in this action, and I have concluded on the basis of this review and
consultation that there is a reasonable basis for the commencement of this action.

Dated: New City, New York
January 9, 2014


ISABEL L. BECKER, Plaintiff Pro Se
P.O. Box 796
49 Maple Avenue
New City, NY 10956
(845) 634-3696

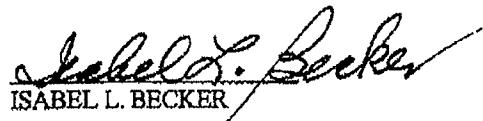
PARTY VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF ROCKLAND)

ISABEL L. BECKER, being duly sworn, deposes and says:

I have read the foregoing COMPLAINT and know the contents thereof, and I believe the matters alleged herein to be true.

The source of my information and the grounds of my belief are my personal experiences and communications, and correspondence, papers, reports, and investigations contained in the file.


ISABEL L. BECKER

Sworn to before me this
9th day of January, 2014

Wanda P. Soto

WANDA P. SOTO
NOTARY PUBLIC, State of New York
No. 01SO8245028
Qualified in Rockland County
Commission Expires September 6, 2015

